



**Federal Communications Commission
Washington, D.C. 20554**

December 4, 2018

In Reply Refer to:
1800B3-SS

Mr. Dylan Berichon
9262 SE Washington St.
Portland, OR 97216

Friends of Portland Community Radio
c/o Mr. David Kyle
235 SW 140 Avenue
Beaverton, OR 97006

Bustos Media Holdings, LLC
5110 SE Starks Street
Portland, OR 97215

**In re: New(FX), Portland, OR
Facility ID No. 201227**

File No. BNPFT-20171212AAB

Informal Objections

Dear Applicant and Objectors:

This letter concerns: (1) the referenced application (Application) of Bustos Media Holdings, LLC (Bustos) for a construction permit for a new FM translator station on Channel 268 at Portland, Oregon;¹ and (2) two separate Informal Objections (Objections) to the Application, filed by Dylan Berichon (Berichon Objection), and Friends of Portland Community Radio (FPCR Objection) on September 30 and November 4, 2018, respectively.² For the reasons set forth below, we grant the FPCR Objection, dismiss the Application, and dismiss the Berichon Objection as moot.

¹ The proposed translator is a fill-in for Station KRYN(AM), Gresham, Oregon.

² David Kyle (Kyle), President of FPCR and filer of the FPCR Objection, claims to be a listener of low power FM station (LPFM) KXYQ-LP, Portland, Oregon. He asserts that the proposed FM translator will interfere with his ability to listen to the signal of KXYQ-LP because the proposed translator and KXYQ-LP are both located at 101.5 MHz. In addition, William Schmidt (Schmidt), Michelle Bolin (Bolin), Derric Crooks (Crooks), Scott Seckington (Seckington) and Kimberley Goddard (Goddard) filed self-styled, separate "Informal Objections" on June 22, August 27, September 26 and October 10, 2018, respectively (Goddard's submission was not dated), which are, in fact, listener complaints against the proposed FM translator. They claim that it could in the future cause interference

Background. Bustos filed for a new FM Translator station at Portland during the filing window in July of 2017.³ Bustos's proposal was determined to be a "singleton," and it was invited to file a long-form application,⁴ which it did on December 12, 2017. The staff accepted the Application for filing on January 26, 2018.⁵ Bustos filed an amendment to the Application on March 14, 2018, proposing a rotation of the antenna pattern.⁶

In his Objection, Berichon argues that Bustos's proposed translator is not in the public interest as it appears to be inconsistent with Section 5 of the Local Community Radio Act of 2010 (LCRA)⁷ and that the Application should be dismissed.

In its Objection, FPCR argues that Bustos's proposed translator will interfere with the established listening audience of KXYQ-LP, Portland, Oregon, in violation of Section 74.1204(f) of the FCC's rules (Rules) and that the Application should be dismissed.⁸ FPCR supplies six complaints of unaffiliated KXYQ-LP listeners and its own Engineering Statement to demonstrate, allegedly using the standard prediction method computing the relative field strengths of the "undesired" and "desired" (U/D) signals at the listener locations,⁹ that the operation of Bustos's proposed translator is likely to cause interference with the reception of KXYQ-LP in areas inside the proposed translator's 60 dBμ contour.¹⁰

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended,¹¹ an informal objection, like a petition to deny, must provide properly supported allegations of fact that, if true, establish a substantial and material question of fact that granting the application would be *prima facie*

to KXYQ-LP. As the Crooks, Seckington and Goddard listener complaints are also attached to the FPCR Objection, we will discuss all of these "self-styled" objections in conjunction with the FPCR Objection.

³ See Application File No. BNPFT-20170731AJK; Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26-August 2, 2017, Public Notice, 32 FCC Rcd 4663 (MB/WTB 2017).

⁴ See *Media Bureau Announces Filing Window for Long-Form Applications*, Public Notice, 32 FCC Rcd 9248, 9265 (MB 2017).

⁵ See *Broadcast Actions*, Public Notice, Report No. 29163 (rel. Jan. 31, 2018). On February 13, 2018, Joel Christerson filed a Petition to Deny the Application, claiming harmful interference to Stations KFLY(FM), Corvallis, KXYQ-LP, and KDOO-LP, Portland, Oregon, which the staff denied on September 11, 2018. See *Joel Christerson and Dennis J. Kelly, Esq.*, Letter Order, 1800B3-SS (MB rel. Sep. 11, 2018) (*Staff Decision*). The staff also withheld action on the Application for 40 days from the date of the *Staff Decision*, directing Bustos to demonstrate compliance with 47 CFR § 73.3580.

⁶ See *Broadcast Applications*, Public Notice, Report No. 29195 (rel. Mar. 19, 2018).

⁷ Pub. L. 111-371, 124 Stat. 4072 (2011).

⁸ FPCR Objection at 1; see also 47 CFR § 74.1204(f).

⁹ See FPCR Objection at Appendix A, page 8.

¹⁰ Seckington, Goddard, Robert Homlstrom, and Curt Janz (Janz) indicate that their residences are located inside Bustos's proposed 60 dBμ contour, while Crooks, Kyle, and Holmstrom indicate that they listen to KXYQ-LP (Crooks also claims interference to his listening of KDOO-LP, Portland, Oregon) in their vehicles on routes inside Bustos's proposed 60 dBμ contour. FPCR Objection at 2. See also the separate objections of Seckington, Crooks, and Goddard, referenced at Note 2, *supra*, each of which contains a plot of the KXYQ-LP and proposed translator contours, as well as, in the case of Crooks, his commuting route.

¹¹ See 47 U.S.C. § 309(d).

inconsistent with the public interest, convenience, and necessity.¹² In this case, the Objections must establish a substantial and material question of fact that grant of the Application would be inconsistent with Section 74.1204(f) of the Rules.

Initially, regarding the assertion in Berichon's Objection that the proposed translator is in violation of Section 5 of the LCRA, we need not address that argument because we are dismissing the Application based on the FCPR Objection.

Regarding FPCR's Objection, we note that, in promulgating Section 74.1204(f) of the Rules, the Commission stated that it "will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap."¹³ Under Section 74.1204(f), in order to provide "convincing evidence" that grant of an FM translator construction permit application "will result in interference to the reception" of an existing station, an opponent must provide, at a minimum: (1) the name and specific address of each potentially affected listener; (2) some demonstration that the address of each purported listener falls within the 60 dBμ service contour of the proposed translator station;¹⁴ (3) a declaration from each of the affected listeners that he or she listens to the station at the specified location; and (4) some evidence that grant of the authorization will result in interference to the reception of the "desired" station at that location.¹⁵ The Commission has stated that "[t]he best method, of course, is to plot the specific addresses on a map depicting the translator station's 60 dBμ contour."¹⁶

Here, FPCR has followed the required protocol by submitting documentation from listeners certifying that they are regular listeners of KXYQ-LP at their homes or in their cars. By plotting the complainants' specific addresses and commuting routes on a map depicting the proposed translator's 60 dBμ contour, FPCR has demonstrated that at least four of those complainants listen in their homes and two more listen on their commuting routes to KXYQ-LP within the proposed translator's 60 dBμ contour. By virtue of its Exhibit utilizing the U/D signal ratio, FPCR provides evidence that the proposed translator will result in interference to at least several of the complainants at the listed locations (*i.e.*, Goddard, Janz, and Seckington). We therefore find that FPCR has adequately substantiated its Section 74.1204(f) claim. Because we find that FPCR has demonstrated that there are KXYQ-LP listeners located within the 60 dBμ contour of the proposed translator that are predicted to receive interference from the facilities proposed in the Application, we will dismiss the Application pursuant to Section 74.1204(f) of the Rules.¹⁷

¹² See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹³ See *Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-6, paras. 7-9 (2004) (*Association*), citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7230 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993).

¹⁴ The staff generally requires demonstrations of actual or potential interference from listeners within the translator station's proposed 60 dBμ contour who are unconnected with the full-service station whose service allegedly will be disrupted. See *Association*, 19 FCC Rcd at 12688 n.37 (approving staff practice requiring that the complainant be "disinterested.").

¹⁵ *Id.*, 19 FCC Rcd at 12687.

¹⁶ *Id.*

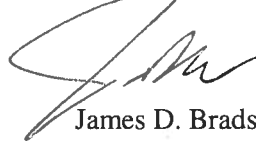
¹⁷ See, e.g., *Association*, 19 FCC Rcd at 12688, para. 16, n.37 citing *Letter to Aaron P. Shainis, Esq. and James L. Oyster, Esq. (Station W279AD, Chesapeake, Virginia)*, (MMB rel. Jan 9, 2003); *Letter to Robert J. Rini, Esq. and*

Conclusion/Actions. For these reasons, IT IS ORDERED, that the Objection filed by FCPR on November 4, 2018, IS GRANTED.

IT IS FURTHER ORDERED, that the Application (File No. BNPFT-20171212AAB) of Bustos Media Holdings, LLC, for a new FM Translator Station at Portland, Oregon, IS DISMISSED.

IT IS FURTHER ORDERED, that the Objection filed by Dylan Berichon on September 30, 2018, on November 4, 2018, IS DISMISSED AS MOOT.¹⁸

Sincerely,



James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

Arthur S. Landerholm, Esq. (Station W220CV, Winnsboro, South Carolina, (MMB rel. Apr. 5, 2002) (staff practice requires “verifiable” complaints from listeners of the station whose reception may be affected by the translator station’s operation).

¹⁸ We also dismiss as moot the self-styled, separate “Informal Objections” filed by Schmidt, Bolin, Seckington, Crooks and Goddard, which are, in fact, listener complaints.